



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amendment)

5 401 KAR 42:300. Third-party claims.

6 RELATES TO: KRS 224.60-120, 224.60-130(1)(c), (e), 224.60-140(2)(b), (17), 40
7 C.F.R. Part 280 Subpart H

8 STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130(1)(c)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(c) requires the
10 establishment of a Financial Responsibility Account to reimburse eligible petroleum storage tank
11 owners and operators for compensating third parties for bodily injury and property damage, and
12 requires the cabinet to establish, by administrative regulation, eligibility requirements for the
13 account. This administrative regulation establishes the procedure for eligible petroleum storage
14 tank owners or operators to receive reimbursement or payment for third-party claims.

15 Section 1. Applicability. (1) An eligible third-party claim shall be limited to bodily injury
16 and property damage, asserted against an owner or operator as a result of sudden or nonsudden
17 accidental releases into the environment from a petroleum storage tank at a facility eligible for
18 participation in the Financial Responsibility Account.

19 (2) A petroleum storage tank owner or operator shall be eligible to receive reimbursement
20 or payment for a third-party claim if:

1 (a) The owner or operator has been issued a Certificate of Registration and
2 Reimbursement Eligibility or a Certificate of Eligibility;

3 (b) The cabinet has approved an Application for Assistance; and

4 (c) The owner or operator has maintained compliance with the eligibility requirements for
5 participation in the Financial Responsibility Account in effect at the time the Application for
6 Assistance was approved.~~[1. The owner or operator has been issued a "Certificate of Registration~~
7 ~~and Reimbursement Eligibility" DEP 7113 (January 2006), incorporated by reference in 401~~
8 ~~KAR 42:020;~~

9 ~~2. The cabinet has approved the "Application for Assistance" DEP 6063 (August 2006);~~
10 ~~and~~

11 ~~3. The owner or operator has maintained compliance with the eligibility requirements of~~
12 ~~the Financial Responsibility Account pursuant to 401 KAR 42:250; or~~

13 (b)~~1. An owner or operator was issued a Certificate of Eligibility prior to the effective~~
14 ~~date of this administrative regulation;~~

15 ~~2. The cabinet approved a previously utilized Application for Assistance; and~~

16 ~~3. The owner or operator has maintained compliance with the eligibility requirements for~~
17 ~~participation in the Financial Responsibility Account in effect at the time of approval.]~~

18 (3) If a petroleum storage tank owner or operator receives a written notice from the
19 cabinet indicating noncompliance with the eligibility of the Financial Responsibility Account
20 pursuant to 401 KAR 42:250, the petroleum storage tank owner or operator shall only be eligible
21 for reimbursement of the costs of third-party claims brought against the petroleum storage tank
22 owner or operator within sixty (60) days from the date of the written notice.

Section 2. Notice to the Cabinet. (1) To assert a claim for payment or reimbursement of a third-party claim, an eligible owner or operator shall:

(a) Submit a new Application for Assistance, DEP 6063 in accordance with 401 KAR 42:250, Section 2; and

(b) Notify~~notify~~ the cabinet of the assertion of the third-party claim within twenty-one (21) days of the filing of an action against the owner or operator by the third party~~[third-party]~~, or the receipt of an assertion of a claim in writing by a third party~~[third-party]~~.

(2) A third-party claim shall be paid on the basis of:

(a) A final and enforceable judgment; or

(b) A written agreement between a third party and the owner or operator, to be reviewed and approved by the cabinet.

(3) Settlement of claims.

(a) A settlement of a third-party claim shall not be made by an owner or operator without the prior approval of the cabinet.

(b) The cabinet shall not pay a third-party judgment or reimburse an owner or operator for payment of the judgment in an amount exceeding a settlement offer rejected by the owner or operator which was:

1. Not submitted to the cabinet for consideration; or

2. Previously approved by the cabinet.

Section 3. Payment of Claims. (1) Claim payment shall be limited to actual, documented, bodily injury and property damage caused by the release of petroleum.

(2) A claim for bodily injury and property damage shall be paid to the extent that the damages are not addressed by the performance of corrective action.

1 (3) The aggregate amount of payment of all third-party claims shall not exceed
2 \$1,000,000 per occurrence of a release.

3 (4)(a) Claim requests shall be submitted on Third-Party Claim Form, DEP 6078;

4 (b) The applicant shall retain a copy of the completed form for their records.

5 (5) The cabinet shall acquire by subrogation the right of the third party~~[third-party]~~ to
6 recover, from the person responsible or liable for the release, the amount of damages paid to the
7 third party~~[third-party]~~.

8 (6)~~[(5)]~~ Reimbursement for third-party claims shall be made in accordance with 401
9 KAR 42:290, Section 2.

10 (7)~~[(6)]~~ Payment of the third-party claim shall be made ~~[to the third party]~~ after approval
11 by the cabinet.

12 Section 4. Incorporation by reference.

13 (1) "Third-Party Claim Form", DEP 6078, (April 2011) is incorporated by reference.

14 (2)(a) This material may be inspected, copied, or obtained, subject to copyright law, at
15 the Division of Waste Management, 200 Fair Oaks Lane, Second Floor, Frankfort, Kentucky
16 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

17 (b) This material is also available on the Division of Waste Management's Web site at
18 <http://waste.ky.gov/ust>.

401 KAR 42:300 approved for filing.

4/14/11
Date

L. K. Peters
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
Division of Waste Management
200 Fair Oaks, Second Floor
Frankfort, KY 40601
Telephone: (502) 564-6716 Fax (502) 564-4049
Email: Cassandra.Jobes@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedure for eligible petroleum storage tank owners or operators to receive reimbursement or payment for third-party claims.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures for payment of third-party claims to eligible PSTeAF applicants.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by limiting the third-party claim payments to the FRA account and limiting them to \$1,000,000 per facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the effective administration of the statutes by outlining procedures for payment of third-party claims.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment changes the existing administrative regulation by requiring the Third-Party Claim form.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to standardize the way third-party claims are made to the agency and then paid.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statute by having a standardized third-party claim form.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statute because it creates a standardized form for third-party claims.

(3) List the type and number of individuals, businesses, organizations, or state and local

governments affected by this administrative regulation:

There are approximately 3,700 registered UST facilities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

They will have to fill out the standardized form when seeking payment of third-party claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

It should not cost additional money for applicants to fill out the third-party claim form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

They may get payment of third-party claims.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

It may cost the agency \$1,000,000 to pay for third-party claims per UST facility.

(b) On a continuing basis:

It may cost the agency \$1,000,000 to pay for third-party claims per UST facility.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The funding source for implementation of this regulation is the PSTeAF

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no need to increase fees to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No. All third-party claims will have the same requirements and be processed the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:300

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-120; KRS 224.60-130

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year?

There will be no additional costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years?

There will be no additional costs associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Third-Party Claim Form", DEP 6078, (April 2011). This document is to be submitted for reimbursement for third-party claims from the Financial Responsibility Account for releases from petroleum UST systems.

This document consists of 2 pages.